19 44. File No. O.C. of Wards 1/49

Legal Deptt

K BRANCH

Subject:— Opinions under the Court of Wards Act — 1905

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Office of the R.L.A.

As the Baroda State will shortly merge into the Province of Bombay and form part of the Province it is no longer necessary to consider the question whether legislation should be undertaken to give effect to the reciprocal arrangement as contemplated.

Id/-P.M.L.
12/2
Remembrancer of Legal Affairs.

U.M. to R.D., No. 1724 , dated the 14th Feb., 1949.

BKS. 11/6/ 4c.

Office of the R.L.A

Pl. see R.L.A's Opinion No. 3145 dt.23.3.1949. (O Tenancy/49)
Gujarat Talukdars Act, 1888 ~~1905 sec. 27(a)~~. Sec. 31(2) Court of Wards Act 1905, Sect 27(a)
ex-post facto sanction for regularising lease exceeding 10 years.

It appears that S.No. 12/1 of Bhilodia talukdari village of Mehlol Estate in the Panchmahals District, which is under the management of the Court of Wards, was ordered to be disposed of by auction under the Collector's order No.W.R.D.W.S.999, dated 2-12-1946 on the analogy of the orders in G.R., R.D. No. 366/33 dated 26-6-1946. The orders contained in the latter G.R,, which govern the disposal of the occupancy rights of Government Waste Lands for agricultura purposes on new and impartible tenure, are inapplicable to the disposal of talukdari lands in view of section 33 of the Gujarat Talukdars' Act. The Commissioner considers that the Collector's order regarding the disposal of the S.No.12/1 of Bhilodia is prima facie incorrect. According to the condition 11 of the conditions subject to which the land was disposed of, the purchaser is only a tenant at will and consequently the transaction according to the Commissioner requires no sanction of Government under section 31(2) of the Gujarat Talukdars' Ac He, however, considers that the disposal is irregular for want of Government sanction under section 27 of the Court of Wards Act. He has, therefore, proposed to Government to regularise the transaction by according ex-post-facto sanction. R.L.A. is requested to advise whether the disposal of land can be regularized by an ex-post-facto sanction under section 27 of the Court of Wards Act.

Under section 27 clause (a) of the Bombay Court of Wards Act, 1905, the previous sanction of the Provincial Government to any lease of property under the management of Court of Wards for a term exceeding ten years is necessary.

The words "previous sanction" apparently mean that the sanction of Government must be obtained before the property can be leased for a term exceeding ten years. Consequently, the ex-post-facto sanction of Government under section 27 cannot be granted to regularise the lease of property for a term exceeding ten years. It appears, however, that the question of granting any sanction under that provision does not arise in the present case; for, as stated by the Commissioner, according to condition 11 of the Conditions, what was disposed of was merely a tenancy at will. A tenancy at will is determinable at the will either of the landlord or of the tenant. Law implies a tenancy at will of one party to be a tenancy at will of either party. (see Mankoka vs. Chinappa, 36 Mad., 557). A tenant at will is not liable to ~~pay~~ pay rent because there has been no demise to him. He is not liable for mesne profits or damages like a trespasser because his occupation ~~fxxxxxxxxxxxxxxxx~~ is permissive but he is liable to ~~x~~ pay compensation for use and occupation. A demand by the landlord for possession is sufficient to terminate a tenancy at will (see Deonandan Pershad v. Meghu Mahton, 34 Cal.,57). It is, therefore, clear that the disposal of the land in the present case would create no tenancy rights and consequently section 27(a) of the Bombay Court of Wards Act will have no application.

Id/-P.M.L.
22/2
Remembrancer of Legal Affairs.

U.R. to R.D., No. 2174 ,dated the 23rd February 1949.

BKS. 11/6/ 49.

Office of the R.L.A.

Withdrawal of temporary custody held under section 10(1) of Bombay Court of Wards Act, 1905

The Commissioner, Central Division, has recommended to Government for giving sanction under section 18 of the Court of Wards Act, 1905 for the withdrawal of the temporary custody and management of the Sardar Phadnis estate on the ground that the Civil Court has held that the gift-deed made in favour of the illegitimate son of the Sardar is valid and that in view of the heavy - liabilities amounting to Rs. 90,000/- against the Sardar Phadnis estate, it would not be possible to manage economically the estate by the Court of Wards. The R.L.A. is requested to advise whether it is not legally feasible to accept the Commissioner's recommendation.

Section 18 of the Bombay Court of Wards Act, 1905, has no application to the present case since the claims have not been investigated under section 16 as the superintendence of the property was not assumed under section 4(1). The Court of Wards under the orders of the District Judge has been holding the temporary custody of the property under section 10(1). If it be considered that the management of the property is not economically feasible, the proper course for the Court of Wards would be to apply to the District Court to rescind the order of the temporary custody made under section 10(1) and also to withdraw the application made under section 5(1). That course may be followed after the Revision Application which has been remanded to the District Court has been disposed of

Id/-P.M.L.
23/2
Remembrancer of Legal Affairs.

U.R. to R.D., No. 2277 ,dated the 24th February 1949.

DKS. 11/6/ 4c.

Office of the R.L.A.

Adoption by widow of a Talukdar.

It appears there is enough evidence to prove the factum of adoption as well as its validity. There would therefore be no legal objection to recognising the adoption unless it is disputed by the coparceners of the deceased Pralhadsinhj: If it be disputed, the adoptee may be asked to to the civil court and obtain a declaration tha he is validly adopted and entitled to claim the estate.

Id/-P.M.L.
6/4
Remembrancer of Legal Affairs.

U.R. to R.D., No. 3755 ,dated the 7th April 1949.

BKS. 11/6/ 4c.

Office of the R.L.A.

Management of estate in integrated states. Bombay Court of Wards Act, 1905. Section 4

Indian States (Application of Laws) Order, 1948.
Indian Trusts Act, 1882.
Sections 15,94.

In view of paras. 3 and 4 of the Indian States (Application of Laws) Order, 1948, it is clear that the Bombay Court of Wards Act, 1905 (I of 1905) is extended and has come into force with effect from the 28th July 1948 in the Indian States which have either merged or integrated with the Province of Bombay. Para 5 provides for repeal of any enactment corresponding to the Bombay Court of Wards Act, 1905, in these states. The proviso to this para. saves anything already done or suffered or any right, title, obligation or liability already acquired, accrued or incurred etc. It is clear from these provisions that any estate taken by the Ruler of the State under his management under any corresponding law would be deemed to have been taken under management under the Bombay Court of Wards Act, 1905. It is not therefore necessary to take the sanction of Government under section 4 for continuing the management of the said estate; and the estate may be managed as if it were formally taken under ~~mxgx~~ management under the provisions of the said Act. But if the estate was taken by the state und its management by an executive order it would be necessary to regularise the management under the Bombay Court of Wards Act. (Cf. R.L.A's opinion No. 6762, dated the 18th June 1949); and until it is so done, there would be no legal objection to continuing the administration of the estates and incurring the expenditure for purposes mentioned by the Commissioner in his letter at page 1 ante,. the test being whether the expenditure would be incurred by any man of ordinary prudence in dealing with such property if it were his own (see section 15 of the Indian Trusts Act,1882).

Id/-P.M.L. 8/7
Remembrancer of Legal Affairs

U.R. to R.D.No. 7643, dated the 9th July 1949.
BKS. 11/6/ 4c.

Office of the R.L.A.

Indian Trusts Act,1882.

Sections 32,94 and 95

Post facto sanction of Government to continue the management of the estate until it was actually handed over to the ward would not be warranted by the provisions of the Bombay Court of Wards Act, 1905. However the position of the Court of Wards after the withdrawal of its Superintendence under section 42 would be that of a constructive trustee under section 94 of the Indian Trusts Act and it will have the powers and duties of a trustee under section 95. Consequently the sale of G.P.note of Rs.900 by the Court of Wards for the purpose of recovering the pay, leave salary and pension contribution of the clerks would be lawful under section 32 of the Indian Trusts Act. In the circumstance no further action appears necessary-

Id/-P.H.L.
25/10
Remembrancer of Legal Affairs.

U R. to R.D. No. 11918 dated the
26th October 1949.

BKS. 11/6/ 4c.

submitted.

2. The management of the Estate of Kumar Shree Himatsinhji was assumed by the Rajpipla State under executive order of the Maharaja of Rajpipla (confl. No.3 dated 2nd February 1933) for reasons contained therein. One of the reasons being that he was heavily indebted and was absent from India. It appears that after the management was resumed by the State a ban was put on the hearing of civil Suits by Courts against the Estate and all crediters were asked to register their claims in the office of Suba, Rajpipla.. The Suba made summary inquiries of the claims submitted to him and submitted the papers to the Husur Office. Since there were not sufficient funds to the credit of the Estate the matter was pending till 1948. The Maharaja of Rajpipla by his order No. 420 dated 30-5-1948 on the recommendations made by the Suba, directed that the creditors mentioned therein should be given the sums mentioned against them in full satisfaction of their claims. The payments accordingly have been made. Messrs. G.J.Malavia and L.S. Ganchi two of the crediters however have represented to the Collector of Surat and the Commissioner, N.D. that what they have been given under the Husur Order is only the capital and that they should not be deprived of the interest since the capital was held up for more than 15 years. But since the matter was finally decided by the State, the Collector and the Commissioner refrained from reopening the point. Now K.S. Himatsinhji through his Advocate has requested Government to release his estate from management and his wife A.S. Gulakuvar has requested Government to sanction a maintenance allowance to her before withdrawal of the management. The Collector of Surat, and the Commissioner N.D. have requested the release of the estate from management. In these circumstances the R.D. has raised the following points for consideration:

(i) whether it is necessary to regularise the management of the estate of K.S.Himatsinghji, before withdrawing Govt. management over the estate;

(ii) whether Govt. should consider the request of K.S.Himatsinghji's wife to guarantee maintenance allowance etc. after withdrawal of management; and

(iii) whether Govt. can revise the order passed by the Rajpipla State authorities so as to grant interest on the amounts due to Messrs.G.J.Malvia and L.S. Ganchi.

The R.L.A is requested to advise in the matter.

BKS. 11/6/ 4e.

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Bombay Court of Wards Act. K. S Himatsinghji's Estate Withdrawal from Management from Management etc.

On the first two questions the view taken by Revenue Department is correct. On the third question besides being inexpedient it would be also not lawful to reopen the matter.

Id/-P.M.L
24/10
Remembrancer of Legal Affairs.

U.R. to R.D. No. 11858 ,dated the 25th October 1949.

BKS. 11/6/ 4c.

Office of the R.L.A.

Court of Wards Act, 1905

sec.10(1) & 40(2).

Raisingpur Estate - Continuance of Superintendence over -

The Government Ward Meharban Surupsing Khatia Valvi being dead and the property being unencumbered the Court of Wards would ordinarily be required to withdraw its superintendence from the property of the deceased Ward (see the first proviso to section 40(2) of the Bombay Court of Wards Act, 1905). However if the heir - and it is presumed that hiership goes by primogeniture in this case - is incapable of managing or unfitted to manage the property it would not be expedient to relinquish the present management by the Court of Wards. Government might take suitable steps to approach the District Court under section 10(1) for a fresh declaration in respect of the heir; and secure sanction that way for continuing the management pending the decision of that question.

Id/-PM.L.
11/6
Remembrancer of Legal Affairs.

U.R. to R.D. No. 6501, dated the 13th June 1949.

BKS. 12/6/ 4c.